HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.2569 of 2005

Between:

The Deputy Commissioner of Prohibition & Excise,

Karimnagar and another … Appellants

And

Neerati Rama Raju

… Respondent

::JUDGMENT::

Counsel for the appellants: G.P. for Prohibition & Excise

Counsel for the respondent: Sri K.G.Krishna Murthy

January 23, 2006

Per G.c Bhavani Prasad, J

Feeling aggrieved by order dated 9-9-2004 passed by the learned Single Judge

in Writ Petition No.13875 of 2004, Deputy Commissioner of Prohibition and Excise, Karimnagar and another have filed this appeal.

One Santhapuri Rajaiah, carrying contraband liquor in Bajaj Chetak No.AP-01-B-1019, was apprehended by the Prohibition and Excise Officials of Luxettipet on 25-9-2002. Thereafter, notice was issued to the respondent to show cause as to why the seized vehicle i.e., the scooter may not be confiscated. The respondent contested the notice by asserting that he had no knowledge of the alleged offence committed by Santhapuri Rajaiah. Thereafter, Deputy Commissioner of Prohibition and Excise, Karimnagar (appellant No.1 herein) passed order dated 26-2-2004 under Section 46 (2) of the A.P. Excise Act, 1968 (for short 'the Act') for confiscation of the scooter.

In the writ petition filed by him, the respondent questioned the legality of the order of confiscation by claiming that due to ill-health he could not prefer appeal within time and representation dated 4-8-2004 made by him to the appellate authority was not entertained.

The learned Single Judge vide his order dated 31-8-2004 directed Deputy Commissioner of Prohibition and Excise, Karimnagar to decide the appeal preferred by the appellant on merits.

The learned Government Pleader assailed the order of the learned Single Judge and argued that the direction given by him for entertaining the appeal despite the fact that the same had become time-barred is legally unsustainable. She emphasized that Section 46-C of the Act under which an appeal can be filed against the order of confiscation does not provide any scope for any extension of the period of limitation of 60 days for preferring such an appeal from the date of communication of the order to be challenged and, therefore, the direction given by the learned Single Judge for entertaining the appeal is liable to be set aside.

Learned counsel for the respondent argued that even though there is no express provision under Section 46-C, the appellate authority can, in exercise of its inherent power, extend the period of limitation. He then submitted that the direction given by the learned Single Judge has not resulted in substantial failure of justice and, therefore, the Division Bench may not interfere with the same.

We have considered the respective submissions. Admittedly, the appeal was

filed by the respondent after expiry of the period of limitation prescribed under Section 46-C. That section does not provide for extension of the limitation of 60 days or for condonation of delay in filing the appeal as is contemplated by Section 63 (2) of the Act. Therefore, we are inclined to agree with the learned counsel for the appellants that the learned Single Judge could not have directed entertaining of the appeal filed by the respondent.

The question whether the provisions of the Limitation Act can be applied to the provisions of the Act for the purpose of extending the period of limitation or for condonation of delay must be answered in negative in view of the judgments of the Supreme Court in **Mukri Gopalan v. C.P. Aboobacker** and of this Court in **A.V.U.Engineers (P) Ltd. v. Appellate Dy.Commissioiner (CT), Hyd.** I n **Mukri Gopalan**[1] (supra), the Supreme Court considered the issue whether the provisions in the Limitation Act can be made applicable to the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965. Their Lordships considered the provisions of the Kerala Act and laid down the following proposition:

> "When the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period. While the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is therefore different from that prescribed in the former and thus S.29 (2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act. Once the two conditions namely (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application. (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act are satisfied S.29 (2) on its own force will get attracted to appeals filed before appellate authority under S.18 of the Rent Act. When S.29(2) applies to appeals under S.18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Ss.4 to 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of S.5 of the Limitation Act to appeals filed before appellate authority under S.18 of the Act. Consequently, all the legal requirements for applicability of S.5 of the Limitation Act to such appeals in the light of S.29 (2) of Limitation Act can be said to have been satisfied. It is therefore clear that the appellate authority constituted under S.18 of the Kerala Rent Act, 1965 functions as a Court and

the period of limitation prescribed therein under S.18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Ss.4 to 24 of the Limitation Act, 1963. Such proceedings will attract S.29 (2) of the Limitation Act and consequently S.5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals."

In **A.V.U.Engineers (P) Ltd.**[2] (supra) this Court held that the Andhra Pradesh General Sales Tax Act, 1957 is a self-contained Code and, therefore, the provisions of the Limitation Act, 1963 are not applicable.

The ratio of the aforementioned decisions is that the provisions of Section 29 (2) of the Limitation Act is attracted only when the two conditions specified therein, namely 1) that there is a provision for limitation under a special or local law in connection with any suit, appeal or application and, 2) that the period prescribed under special law is special than the one prescribed by the Schedule appended to the Limitation Act. In the present case, we find that there is no provision in the Schedule of the Limitation Act for filing appeal against an order of confiscation of the vehicles used for committing an offence under the Act. Therefore, the provisions of Section 29 (2) of the Limitation Act cannot be invoked for extending the period of limitation prescribed under Section 46-C of the Act. As a corollary, it must be held that the learned Single Judge could not have directed the entertaining of the appeal filed by the respondent.

Notwithstanding the above conclusion, we feel that the question of maintainability of the writ petition against order dated 26-2-2004 passed by Deputy Commissioner of Prohibition and Excise, Karimnagar deserves to be considered by the learned Single Judge. The question whether the respondent, who did not avail the statutory remedy of appeal within the period of limitation prescribed under Section 46-C, could invoke jurisdiction of this Court under Article 226 of the Constitution was required to be decided by the learned Single Judge, which has admittedly not been done. It is therefore reasonable to allow the appeal and remand the case to the learned Single Judge for fresh adjudication of the writ petition.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the case is remanded for fresh adjudication of the writ petition on

merits involving challenge to the order of confiscation passed by the Deputy Commissioner of Prohibition and Excise, Karimnagar dated 26-02-2004.

G. BHAVANI PRASAD, J

G.S. SINGHVI, CJ

January 23, 2006

Svv / svs